

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 04/2016 (S.B.)**

Mrs. Mugdha W/o Bhushan Lamsoge,
Aged about 33 years, Occ. Service,
R/o 102, Meghdhanusha Vrundawan Apartment,
7 and 8, Vishram Nagar, Sugat Nagar Bazar Road,
Nagpur- 440 026.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary,
Dairy Development,
Mantralaya, Mumbai- 32.
- 2) The Commissioner,
Dairy Development Department,
Maharashtra State Administrative Building,
Abdul Gaffar Khan Road, Worli Seaface,
Mumbai-400 016.
- 3) The Additional Commissioner
(Marketing and Distribution) Dairy Development
Department, Maharashtra State, Mumbai-18.
- 4) The Regional Dairy Development Officer,
Government Milk Scheme, Telankhedi Road,
Civil Lines, Nagpur.
- 5) The General Manager,
Government Milk Scheme,
Telankhedi Road, Civil Lines,
Nagpur-440 001.

Respondents.

S/Shri S.S. Ghate. R.A. Pande, Advocates for the applicant.

Shri S.A. Sainis, P.O. for respondents.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

JUDGMENT**(Delivered on this 7th day of June,2019)**

Heard Shri S.S. Ghate, learned counsel for the applicant and Shri S.A. Sainis, learned P.O. for the respondents.

2. It seems from the facts of the case and the documents that the applicant initially joined duty as Laboratory Assistant. In the year 2008 the applicant was promoted as Dairy Chemist and transferred to Nagpur. On 20/06/2013 and 29/06/2013 two Tankers of milk were dispatched to Dhule. The Tankers were rejected on the ground that the density of the milk was less than the standard and it had unnatural smell. The milk in both the Tankers was received back by the Nagpur Dairy. It was re-examined and it was noticed that the milk was as per prescribed standard, in a good condition for human consumption, there was no smell and accordingly the matter was reported to the Higher Authority. It was also informed to Dhule Dairy that there was some defect in their Lactometer and the concerned Officer who rejected to receive the Tankers mechanically mentioned that there was unnatural smell without giving the details of that smell. Under these circumstances when matter came to the notice of the Higher Authority, i.e., the Bombay office, direction was issued to fix the

responsibility for the loss sustained by the Department due to rejection of the Tankers.

3. It appears from the record that mechanically the applicant was held responsible for the loss due to re-transportation of the milk and as per order at Annex-A-19 the Regional Dairy Development Officer, Nagpur hold that the applicant and Shri Manwatkar were responsible for the loss and to recover amount Rs.36,622/- from each of them. Thereafter memo dated 24/03/2014 was served on the applicant and she was called upon to show cause why amount Rs.54,933/- be recovered from her as loss was caused to the Department. The applicant submitted her explanation, but it was in vain and straightway the Department recovered amount Rs. 54,933/- from the applicant. The applicant paid that amount under protest.

4. Even for a sake of argument it is accepted the memo was issued and it was the inquiry under Section 10 of the Maharashtra Civil Services (Conduct) Rules, 1979, but it must be accepted that inquiry was not conducted to fix the responsibility. The entire communication between the Higher Authority discloses that the observations made by the Officer who rejected the Tankers at Dhule was defective, the milk was in a complete order, after re-examination of both the Tankers again the milk was transported in Tankers, it was sold to public and no complaints were received. It seems that this

material part of evidence was not considered and mechanically order was passed and direction was issued to fix the responsibility. It must be pointed out that no attempt was made to investigate whether the staff at Nagpur or Dhule was responsible for the loss occurred to the department. In this background the Department straight way decided to recover the loss from the applicant and one other person.

5. In this background, it must be noted that though it was desire of the Head of the Department to fix the responsibility, there should have been a preliminary inquiry to see who committed the wrong, whether the Officer at Dhule or Officer at Nagpur and without exercising this, straightway inference was drawn that the present applicant and another colleague of the applicant were responsible. Thus it is apparent that the procedure followed by the Competent Authority, i.e., the Chief Manager, Government Milk Scheme, Nagpur is not recognised by law and it is contrary to the evidence which is available. The legal position is settled that any conclusion which is contrary to the evidence cannot be sustained. I, therefore, accept that the decision to recover the amount Rs. 54,933/- from the applicant is illegal, it cannot be sustained. As the applicant has deposited this much amount under protest, therefore, she has right to recover the amount from the Department. In the result, the following order –

ORDER

The O.A. is allowed. The respondents are directed to refund amount of Rs.54,933/- with simple interest @ 6% p.a. from the date of deposit of the amount by the applicant, till the repayment of this amount to the applicant. No order as to costs.

Dated :- 07/06/2019.

*dnk.

(A.D. Karanjkar)
Member (J).